

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 10/521,706

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Customer No.: 24737

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

March 8, 2008

APPEAL BRIEF

Dear Sir:

Attached herewith is an Appeal Brief pursuant to 35 U.S.C. §134 and 37 C.F.R. §41.37 for the above-identified patent application in support of a Notice of Appeal filed at the US Patent and Trademark Office on January 15, 2008.

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I. REAL PARTY IN INTEREST

The real party in interest in the above-entitled application is Koninklijke Philips Electronics N.V., Eindhoven, NL.

II. RELATED APPEALS AND INTERFERENCES

The undersigned attorney/agent, the appellants, and the assignee are not aware of any related appeals or interferences that would directly affect, or be directly affected by, or have a bearing on the Board's decision in this pending appeal.

III. STATUS OF THE CLAIMS

Claims 1-17 are rejected, and are all on appeal.

IV. STATUS OF AMENDMENTS

No after final amendments have been submitted.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Independent **claim 1** is directed towards a method of playing a game by means of a game element. (See page 8, line 15; Fig. 5). The method includes: placing the game element on a first location relative to a game board (See page 9, lines 1-2; Step 100); determining, by the game board, the first location of the game element (See page 9, lines 12-13; Step 200); determining, by the game board, a first information item representing game content (See page 9, lines 31-32; Step 600); wherein the first information item is dependent on said location and a first game being played (See page 9, lines 32-33; Step 600); transferring, by the game board, the first information item to the game element (See page 10, lines 8-9; Step 700); and receiving and presenting the first information item on the game element (See page 10, lines 13-14; Step 800).

Claim 2, which depends from claim 1, recites that the step of determining the first location of the game element includes: transmitting, by at least one transmitter located on the

game element, at least one signal identifying the game element (See page 9, lines 14-15; Step 300); receiving, by at least one sensor located on the game board, at least one identifying signal (See page 9, lines 20-21; Step 400); and determining, by the game board, the first location based on at least one identifying signal (See page 9, lines 24-25; Step 500).

Independent **claim 7** is directed towards a game element for playing a game (See page 4, line 30; page 5, lines 3-4; page 7, lines 11-17; Figs. 1 and 4; game elements 10 and 42-44; 43). The game element includes: means for placing it on a first location relative to a game board (See pages 5-6, lines 33-1; Fig. 1; game connector 19); means for transmitting, by at least one transmitter located on the game element, at least one signal identifying said game element (See page 5, lines 9-14; Fig. 1; transmitter 12); and means for receiving and means for presenting a first information item representing game content (See page 6, lines 1-2; pages 4-5, lines 33-7; Fig. 1; communication device 16), wherein said first information item is dependent on a first location of the game element on a playing field of a game board and a first game being played, and wherein said first information is received from the game board (See page 8, lines 12-14).

Independent **claim 8** is directed towards a game board for playing a game (See page 4, line 30; page 5, lines 3-4; page 7, lines 10-11; Fig. 4). The game board includes: means for determining a first location of a game element on a playing field of the game board (See page 6, lines 13-17; transmitters); means for determining a first information item representing game content (page 5, lines 16-18; page 6, line 31-32); wherein said first information item is dependent on said first location and a first game being played (page 8, lines 12-14; page 9, line 32-33); and means for transferring the first information item to the game element (See page 5, lines 32-33; page 10, line 8-9; processor).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-10 are unpatentable under 35 U.S.C. 102(b) over Norman et al. (US 5,702,305);

Whether claims 11, 12, 14, and 17 are unpatentable under 35 U.S.C. 103(a) over Norman et al. (US 5,702,305) in view of Golad (US 6,231,441); and

Whether claims 13, 15, and 16 are unpatentable under 35 U.S.C. 103(a) over Norman et al. (US 5,702,305) in view of Lam (US 6,190,174 B1).

VII. ARGUMENTS

A. The Rejection of Claims 1-10 under 35 U.S.C. 102(b)

Claims 1-10 stand rejected under 35 U.S.C. §102(b) as being anticipated by Norman et al. This rejection should be withdrawn because Norman et al. does not teach each and every aspect as set forth in the subject claims and, thus, does not anticipate claims 1-10.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). (See MPEP §2131).

Claims 1 and 3-6

Independent claim 1 is directed towards a method of playing a game by means of a game element. The method comprising the steps of:

- placing the game element on a first location relative to a game board;
- determining, by the game board, the first location of the game element;
- determining, by the game board, a first information item representing game content, wherein said first information item is dependent on said location and a first game being played;
- transferring, by the game board, the first information item to the game element; and
- receiving and presenting said first information item on the game element.

In the Advisory Action, the Office asserts that the term “location,” given the broadest reasonable interpretation, as defined by www.dictionary.com, means “any position on a register or memory device capable of storing one machine word.”

First, the legal standard for interpreting the claims during patent examination is, the pending claims must be “given their broadest reasonable interpretation consistent with the specification.” (See MPEP §2111 citing *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005). “[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention” (See MPEP §2111.01 citing *Phillips v. AWH Corp.*, 415 F.3d at 1313). The Office determines the scope of claims in patent applications ... giving claims their broadest reasonable construction “in light of the specification as it would be interpreted by one of ordinary skill in the art.” (See MPEP §2111 citing *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004)).

The Office’s interpretation would require the act of placing the game element on a first “position on a register or memory device capable of storing one machine word” relative to a game board. Such an interpretation is nonsensical, inconsistent with the specification, and not ordinary or customary with the meaning that the term would have to a person of ordinary skill in the art at the time of the invention.

The Office also asserts that the term “element” is a component or constituent of a whole or one of the parts into which a whole may be resolved by analysis. The Office then concludes that Norman et al. teaches the claimed game element because two components, the personal display unit and the virtual image, are an element of the game. First, claim 1 requires a game element, whereas the Office addresses an element of a game and states that Norman discloses an element of a game. As such, the Office does not address the subject claim limitation. Next, the Office’s conclusion that two components teach the claimed game element is inconsistent with the Office’s interpretation that the term element is one of the parts of a whole.

In addition to the above, the Office continues to assert Norman et al. teaches ***determining, by the game board, the first location of the game element*** at column 3, lines 17-18, column 2, lines 1-55, column 3, lines 7-20, and column 6, lines 30-37. Applicant traverses this assertion.

With respect to column 3, lines 17-18, the Office asserts that Norman et al. discloses that as a player moves, game data changes. The Office concludes from this disclosure that the position of the game element is determined in order for the game data to change due to position change. However, after stating “[a]s the player moves, game data changes,” Norman et al. notes that such game changes may be made known to all the game players or only to the player moving on their personal display unit. Norman et al. then provides an example of what he meant. In the example, Norman et al. states, “if the player is ‘building’ an object, what they build, such as a railroad, bridge, building, hotel, etc., depending on the game, can be visible to the other players, but private information, like how much money they have or what they have learned, remains private, and would only be displayed on that players personal display unit.” (See column 3, lines 21-26). Hence, Norman et al. clearly does not mean that a change or move in the location of the personal display unit, including the placement of a game element on a computer register, results in a change in game data. Rather, Norman et al. is simply referring to a player “taking his turn.”

With respect to column 2, lines 1-55, the Office asserts that Norman et al. discloses that each personal display unit is capable of allowing the individual player to monitor the individual’s personal game status as well as a means for obtaining additional data, help, clues, or in planning future tactical moves with regard to the game being played. The Office concludes from this disclosure that in order for the display unit to help planning future tactical moves, the location of the personal display unit “must” be determined. (See Office Action, page 7, paragraph 8). The Office is mistaken. For example, Norman et al., at column 3, lines 7-20, discloses that the game can be a card game, which is displayed in a common group view area/display and/or on individual personal display units. Figure 11 of Norman et al. shows the display of the card game (in which a player can draw cards, hold, or fold) on one of the

personal display unit. For the illustrated card game, the location of a personal display unit or the placement of a game element on a computer register/memory is independent of a player's future tactical move, e.g., draw, hold or fold. Thus, the location of a personal display unit or placement of a game element on any position on a computer register/memory does not have to be determined in order for a player to plan future tactical moves as purported by the Office.

With respect to column 3, lines 7-20, the Office asserts that Norman et al. discloses that a common view area shows the area surrounding a player and can be seen as a direct view or a virtual image. The Office concludes from this disclosure that the location of the game element is determined if the area surrounding the player can be viewed. Applicant respectfully submits that the Office has misconstrued this section Norman et al. as well. More particularly, in the subject section Norman et al. discloses that "[a]t the start of the game, the common group view area, or display, contains 'playing field' type information to define that particular game. This can be a deck of cards, face down, or can be a portion of a simulated world, in which the player can move. For example, the common view area shows the player whose turn it is, and the area surrounding that player. This image can be seen through a centrally located direct view image by all players of the game or, alternatively, on each player's personal display unit as a direct view or virtual image." Thus, Norman et al. teaches that the common and/or personal displays may show a simulated world, for example, showing the player whose turn it is and an area surrounding the player, as a direct view or virtual image. Showing a simulated world does not require determining the location of the player or a game element position on a computer register/memory by a game board.

With respect to column 6, lines 30-37, the Office asserts that Norman et al. discloses a plurality of personal display units in communication with a control unit embedded in a centrally located game board. The Office states that the control unit controls the personal display units and determines location of the game elements as previously noted in the Office Action. However, as discussed above the sections referenced by the Office do not teach or suggest claim aspects.

The Office also continues to assert that Norman et al. teaches *determining, by the game board, a first information item representing game content, wherein said first information item is dependent on said location and a first game being played* at column 2, lines 1-55. More particularly, the Office asserts that Norman et al. discloses that each personal display unit is capable of allowing the individual player to monitor the individual's personal game status as well as a means for obtaining additional data, help, clues, or in planning future tactical moves with regard to the game being played. Again, the Office mistakenly concludes from the referenced portion of the subject section of Norman et al. teaches that in order for the display unit to help planning future tactical moves, the location of the personal display unit "must" be determined. As discussed *supra*, displaying cards from a card game on a personal display unit to allow the player to determine whether his/her next move should be to draw, hold or fold does not require determining the location of the personal display unit or the position of a game element on a register/memory as purported by the Office.

In view of the foregoing, it is readily apparent that Norman et al. does not teach each and every aspect of claim 1 and, thus, does not anticipate claim 1. Accordingly, reversal of this rejection is respectfully requested.

Claims 3-6 depend from claim 1 and the rejection thereof should be reversed at least due to their dependencies from claim 1.

Claims 2 and 9

Claim 2 depends from claim 1, and recites transmitting, by at least one transmitter located on the game element, at least one signal identifying said game element, receiving, by at least one sensor located on the game board, at least one identifying signal, and determining, by the game board, the first location based on at least one identifying signal. **Claim 9**, which depends from independent claim 8, recites similar aspects. To support the rejection of this claim, the Office cites column 2, lines 56-60. More particularly, the Office states that the transmitter located in the game element is the personal display unit and the location

determined is of the direct view or virtual image show at the personal display unit. Then the Office states that the game element is a combination of the personal display unit and the virtual image, which is placed on the game board.

First, in contrast to the Office's assertion, column 2, lines 56-60, of Norman et al. discloses that "there exists a common group view area or display, either viewed as a centrally located display, utilizing a direct view image, visible to all players for communicating game data and information on a general level, or through each personal display unit as a direct view or virtual image." Accordingly, the Office's assertion is unfounded since the Office's assertion is not supported by the section of Norman et al. referenced by the Office. Next, and as discussed above, Norman et al does not teach or suggest determining the location of the game element. Furthermore, the Office's assertion that the game element is a combination of the personal display unit and the virtual image, which is placed on the game board is nonsensical based on the Office's interpretation of the term "element" as a component or constituent of a whole or one of the parts into which a whole may be resolved by analysis. Norman et al. teaches displaying the virtual image on a display 68, which is part of a personal display unit. (See Fig. 6). In light of the above, the rejection of claims 2 and 9 should be reversed.

Claims 7, 8 and 10

Independent **claim 7** recites, *inter alia*, means for receiving and means for presenting a first information item representing game content, wherein said first information item is dependent on a first location of the game element on a playing field of a game board and a first game being played, and wherein said first information is received from the game board. **Claims 8 and 10** recite similar aspects. The Office cites to column 3, lines 1-20, of Norman et al. to teach these claim aspects. However, the referenced section of Norman et al. does not teach or suggest receiving and presenting first information, representing game content, which is dependent on a first location of the game element on a playing field of a game board and a first game being played, where the first information is received from the game board. Rather,

this section of Norman et al. discloses that “[a]t the start of the game, the common group view area, or display, contains ‘playing field’ type information to define that particular game. This can be a deck of cards, face down, or can be a portion of a simulated world, in which the player can move.” This does not teach or suggest the subject claim aspects. As such, the rejection of claims 7, 8, and 10 should be reversed.

B. The Rejection of Claims 11, 12, 14, and 17 under 35 U.S.C. 103(a)

Claims 11, 12, 14, and 17 stand rejected under 35 U.S.C. 103(a) over Norman et al. in view of Golad. **Claims 11, 12, 14 and 17** depend from claims 7 or 8 and the rejection thereof should be reversed at least due to their dependencies from claims 7 or 8.

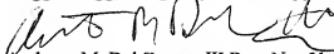
C. The Rejection of Claims 13, 15 and 16 under 35 U.S.C. 103(a)

Claims 13, 15 and 16 stand rejected under 35 U.S.C. 103(a) over Norman et al. in view of Lam. **Claims 13, 15 and 16** depend either directly or indirectly from claims 7 or 8 and the rejection thereof should be reversed at least due to their dependencies from claims 7 or 8.

CONCLUSION

In view of the foregoing, it is submitted that the claims distinguish patentably and non-obviously over the prior art of record, and reversal of the rejection of the claims herein is respectfully requested.

Respectfully submitted,
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VIII. CLAIM APPENDIX

1. (Original) A method of playing a game by means of a game element, the method comprising the steps of:
 - placing the game element on a first location relative to a game board;
 - determining, by the game board, the first location of the game element;
 - determining, by the game board, a first information item representing game content, wherein said first information item is dependent on said location and a first game being played;
 - transferring, by the game board, the first information item to the game element; and
 - receiving and presenting said first information item on the game element.
2. (Original) A method as claimed in claim 1, characterized in that the step of determining the first location of the game element comprises the steps of:
 - transmitting, by at least one transmitter located on the game element, at least one signal identifying said game element;
 - receiving, by at least one sensor located on the game board, at least one identifying signal; and
 - determining, by the game board, the first location based on at least one identifying signal.
3. (Previously presented) A method according to claim 1, characterized in that the method further comprises the steps of:
 - removing the game element from the first location; and
 - placing the game element in a second location relative to the game board.
4. (Previously presented) A method according to claim 1, characterized in that the method further comprises the step of:
 - receiving a second information item representing a second game being played.

5. (Previously presented) A computer system for performing the method according to claim 1.
6. (Previously presented) A computer program product comprising program code means stored on a computer-readable medium for performing the method of claim 1 when the computer program is run on a computer.
7. (Previously presented) A game element for playing a game, said game element comprising:
 - means for transmitting, by at least one transmitter located on the game element, at least one signal identifying said game element; and
 - means for receiving and means for presenting a first information item representing game content, wherein said first information item is dependent on a first location of the game element on a playing field of a game board and a first game being played, and wherein said first information is received from the game board.
8. (Previously presented) A game board for playing a game, said game board comprising:
 - means for determining a first location of a game element on a playing field of the game board;
 - means for determining a first information item representing game content, wherein said first information item is dependent on said first location and a first game being played; and
 - means for transferring the first information item to the game element.
9. (Original) A game board according to claim 8, characterized in that the means for determining a first location of a game element comprises:

9. (Original) A game board according to claim 8, characterized in that the means for determining a first location of a game element comprises:
 - means for receiving, from at least one sensor located on the game board, at least one identifying signal; and
 - means for determining the first location based on at least one identifying signal.
10. (Previously presented) The method according to claim 1, wherein the first location is on a playing field of the game board.
11. (Previously presented) The game element of claim 7, further comprising means for transmitting a signal that informs the game board that the game element is being used in a game.
12. (Previously presented) The game element of claim 7, further comprising means for receiving input that is indicative of a user's desire to play to a second game.
13. (Previously presented) The game element of claim 7, further comprising means for physically connecting the game element to the game board.
14. (Previously presented) The game board of claim 8, wherein the game content reflects a status of the game and the sensed first location of the game element and is to be presented by the game element.
15. (Previously presented) The game board of claim 8, further comprising:
 - means for receiving a signal that identifies the game element, wherein the means for determining the first location of the game element determines the location of the game element based upon the received signal.

16. (Previously presented) The game board of claim 15, wherein the means for determining the first location of the game element determines location coordinates of the game element, wherein the location coordinates are defined relative to a fixed point on the game board.
17. (Previously presented) The game board of claim 8, further comprising means for transmitting a message to the game element indicating that a rule of the game has been broken based upon the first location of the game element.

IX. **EVIDENCE APPENDIX**

None.

X. RELATED PROCEEDINGS APPENDIX

None known to undersigned attorney/agent.